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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1974 OF 2006

Jaykumar Rallappa Sakale & anr. Appellants
versus
Life Insurance Corpn. of India Respondent

Mr.Shivajirao Masal for appellants.
Mr.V.Y.Sanglikar for respondent

CORAM : A.S.OKA, J.
DATE : 01st March 2007

PC :

1. Admit. Learned advocate for the respondent waives service. Taken up for hearing.

2. The appellants are the defendants in a suit filed by the respondent Corporation. There is a money decree passed in favour of the respondent on 16th November 2002. The money decree is in the amount of Rs.2,46,141/- together with interest thereon @ 14% p.a. from the date of the suit till its realisation. The decree has been passed ex-parte. Though the appellants were served with the summons they did not appear and did not contest the suit.

3. The submission of the learned advocate for

the appellants is that certain amounts were paid to the respondent for which credit was not given by the respondent. He submitted that all the details of the said amounts are mentioned in the Civil Application for stay. It is submitted that if an opportunity is made available to the appellants to appear in the Trial Court and to contest the suit, the appellants will be in a position to produce the material to show that various amounts have been received by the respondent and the said amounts are not reflected in the suit claim. On instructions of appellants, he states that the appellants are ready and willing to deposit a sum of Rs.2.50 lakh (Rs.Two lakh fifty thousand only) in the Trial Court within a period of eight weeks from today. He states that the deposit will be made without prejudice to the rights and contentions of the appellants.

4. Learned advocate appearing for the respondent opposed the appeal by submitting that the decree has been passed in the year 2002 and execution application is pending from the year 2003. He submitted that there is absolutely no ground to set aside the decree and to remand the suit to the Trial Court.

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5. I have considered the submissions. I have perused the averments made in the application for stay and the documents annexed to the said application. The appellants have offered to deposit a substantial amount. It is true that the appellants have not contested the suit but now they have offered to deposit a substantial amount. Considering the bona fides shown by the appellants and considering the averments in the Civil Application for stay, in my view, one opportunity deserves to be granted to the appellants to contest the suit by setting aside the impugned judgement and decree. The prejudice which may be caused to the respondent can be compensated by ordering the appellants to pay heavy costs. While quantifying the costs, it must be noted that there was a delay in filing this appeal and therefore the appeal which was filed in the year 2003 is coming up for admission in the year 2007. As a result of pendency of the application for condonation of delay and the present appeal, the execution application has not made any progress. Therefore, the costs will have to be quantified at Rs.15,000/-. Hence I pass following order.

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6. ORDER :-

a) The impugned judgement and decree dated 16th November 2002 is quashed and set aside subject to condition of appellants depositing a sum of Rs.2.50 lakh (Rs.Two lakh fifty thousand only) with the Trial Court within a period of eight weeks from today;

b) The appellants shall deposit the costs of Rs.15,000/- payable to the respondent with the Trial Court within a period of eight weeks from today;

c) It is made clear that if the deposit of the amount of Rs.2.50 lakh (Rs.Two lakh fifty thousand only) and costs of Rs.15,000/- (Fifteen thousand only) is not made within the stipulated period of eight weeks from today, the impugned judgement and decree will stand and will become executable;

d) If the amounts as aforesaid are deposited within the stipulated period, the respondent will be entitled to withdraw the amount of costs of Rs.15,000/-. The respondent will also be entitled to withdraw the sum of Rs.2.50 lakh

subject to giving an undertaking to redeposit the amount with appropriate rate of interest in case the appellants succeed in the suit;

e) In case compliance is made by the appellants with the conditions imposed as above, the parties will appear before the Trial Court on 11th June 2007 at 11.00 a.m.. The appellants shall file their written statement on that day. No further time shall be granted to the appellants to file the written statement;

f) The learned Trial Judge will decide the suit as expeditiously as possible and preferably on or before 31st December 2007;

g) The Trial Court will permit the appellants to lead evidence. The respondent will be also entitled to lead further evidence in addition to the evidence which is already adduced before the impugned decree was passed;

h) The appeal is partly allowed in the above terms;

i) Writ to be sent immediately;

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j) All concerned to act on an authenticated copy of this order duly issued by the Registry of Bombay High Court.

(A.S.OKA, J.)